

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X
AURELIO RAMALEZ and MARIA TENEZELA,
on behalf of themselves and others similarly
situated,

Plaintiffs,

v.

BIMMY'S LLC and ELLIOT FREAD,

Defendants.
----- X

ECF Case
No. 10 Civ. 03557 (ILG)(RER)

**[PROPOSED]
REVISED CASE
MANAGEMENT PLAN**

Upon consent of the parties, it is hereby ORDERED as follows:

Upon consent of the parties and consistent with the March 8, 2011 Order of the Honorable Jerome Feller, United States Bankruptcy Court in the Eastern District of New York, it is hereby ORDERED, as follows:

1. The parties shall complete discovery related to the question of whether Defendant Elliot Fread is liable as an employer under the Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL") by March 30, 2012.
2. Pre-motion letters regarding Defendant Fread's liability as an employer must be submitted within two (2) weeks following the close of discovery.
3. If one or both parties move for summary judgment regarding Defendant Fread's liability, the court shall set a briefing schedule for such motion(s).
4. If the Court rules that Defendant Fread is an employer under the FLSA or NYLL, discovery shall proceed with respect to Plaintiffs' class action allegations and liability. If the Court rules that Defendant Fread is not an employer under the FLSA and NYLL, Defendants may revive their motion in the bankruptcy court to extend the automatic stay pursuant to 11 U.S.C. § 362(a) to Defendant Fread. If the Court rules that questions of fact exist as to Defendant Fread's liability as an employer, the Court shall set a trial date for a determination of that issue.
5. Within one week of the Court's ruling on Defendant Fread's liability, the parties shall submit to the Court a revised case management schedule consistent with the Court's

decision and with Paragraph 4 of this Order.

6. The FLSA claims of Plaintiffs and of the putative members of the collective shall remain tolled pursuant to the parties' Stipulation for Tolling Fair Labor Standards Act Statute of Limitations, which the Court so-ordered on November 30, 2010.

By: \s\ Rachel Bien
Rachel Bien

OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, NY 10016
(212) 245-1000
Attorneys for Plaintiffs

Dated: January 5, 2012

By: \s\ Richard M. Howard
Richard M. Howard

MELTZER LIPPE GOLDSTEIN &
BREITSTONE, LLP
190 Willis Avenue
Mineola, New York 11501
(516) 747-0300 x 177
Attorneys for Defendants

Dated: January 5, 2012

SO ORDERED:

Hon. Ramon E. Reyes, Jr.
United States Magistrate Judge